

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JAMES E. SHERROD,

Petitioner,

V.

**STATE OF NEBRASKA and
DIRECTOR ROBERT HOUSTON,**

Respondents.

4:07CV3216

MEMORANDUM AND ORDER

This matter is before the court on five pending motions filed by Petitioner. (Filing Nos. 14, 16, 19, 21, and 23.) Also pending before the court is Respondents' Motion for Summary Judgment. (Filing No. 12.)

Petitioner's Miscellaneous Motions

Petitioner filed a Motion for Default Judgment, arguing that Respondents were ordered to respond by November 15, 2007, and that no response was filed. (Filing No. 14.) However, Respondents timely filed a Motion for Summary Judgment and Brief in Support on November 15, 2007. (Filing Nos. 12 and 13.) Petitioner's Motion for Default Judgment is therefore denied.

Petitioner also filed a Motion to Appoint Counsel (Filing No. 16) and a Motion to Amend Brief (Filing No. 19.) Petitioner previously requested the appointment of counsel, which was denied by the court on October 4, 2007. (Filing No. 8.) The circumstances have not changed significantly and Petitioner's Motion to Appoint Counsel is again denied for the reasons set forth in the court's previous Memorandum and Order. (*Id.*) Petitioner's Motion to Amend Brief is incorrectly titled, because Petitioner has not previously submitted a brief that may now be amended. Liberally construing the Motion to Amend Brief, it appears that the Motion is actually a Brief in Opposition to Respondents' Motion for

Summary Judgment. (Filing No. 19 at CM/ECF p. 1.) The Motion to Amend Brief is therefore granted and the court will construe the Motion as a response to the Motion for Summary Judgment.

Petitioner's Motions for Additional Documents

Petitioner filed two separate Motions Requesting Additional Documents, which seek various lab reports, misconduct reports, and various medical examination reports of other inmates. (See Filing Nos. 21 and 23.) Liberally construed, Petitioner seeks this additional information in relation to Respondents' Motion for Summary Judgment. It is unclear from these Motions what impact, if any, the requested documents would have on Respondents' Motion for Summary Judgment. Pending the court's receipt of the requested information as set forth below, Petitioner's Motions for Additional Documents are denied without prejudice.

Respondents' Motion for Summary Judgment

Respondents seek the entry of summary judgment in their favor because Petitioner's claims are unexhausted and because his Petition for Writ of Habeas Corpus is untimely. (Filing No. 13 at CM/ECF p. 1.) Respondents also assert that they "are not aware of any state court records which exist with respect to this claim." (*Id.*) However, Petitioner argues that "Respondent[s] do have state court records" and has filed various records from a Lancaster County, Nebraska District Court matter, Case No. CI06-2621. (Filing No. 19 at CM/ECF pp. 1, 3-13.)

The court cannot proceed on Respondents' Motion for Summary Judgment until all relevant state court records are filed, a task which Respondents were previously ordered

to complete. (Filing No. 8.) No later than March 27, 2008, Respondents shall submit to the court a separate brief explaining their search for, and the status of, any relevant state court or other proceedings related to this matter and shall submit all relevant state court or other records which support their Motion for Summary Judgment. Petitioner shall then have until April 28, 2008, to file a response to Respondents' brief. Respondents' Motion for Summary Judgment is taken under advisement until the issues regarding the existence of relevant state court documents are resolved.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Default Judgment (Filing No. 14) is denied;
2. Petitioner's Motion to Appoint Counsel (Filing No. 16) is denied;
3. Petitioner's Motion to Amend Brief (Filing No. 19) is granted. The court construes Petitioner's Motion to Amend Brief as a Brief in Opposition to Respondents' Motion for Summary Judgment;
4. Petitioner's Motions Requesting Additional Documents (Filing Nos. 21 and 23) are denied without prejudice to reassertion after the resolution of Respondents' Motion for Summary Judgment;
5. No later than March 27, 2008, Respondents shall submit to the court a separate brief explaining their search for, and the status of, any relevant state court or other proceedings related to this matter and shall submit all relevant state court or other records which support their Motion for Summary Judgment;
6. Petitioner shall have until April 28, 2008 to file a response to Respondents' brief regarding state court documents; and
7. Respondents' Motion for Summary Judgment is taken under advisement.

DATED this 27th day of February, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge